** RHODE ISLAND DEPARTMENT OF HEALTH OFFICE OF DRINKING WATER TERMS AND CONDITIONS FOR ELECTRONIC DATA REPORTING

These Terms and Conditions establish the roles and actions for the State of Rhode Island Department of Health Office of Drinking Water Quality (HEALTH-DWQ) in Providence, Rhode Island, and state-certified environmental laboratories (Certifier) regarding the electronic submission of regulatory data.

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1. INTENT

The intent of this Agreement is to create legally binding rights and obligations for HEALTH-DWQ and Certifier (collectively, "the Parties") using the Reporting System, to ensure that: (a) use of any electronic functional equivalent of documents referenced or exchanged under this agreement shall be deemed an acceptable practice in the ordinary course of Certifier-to-HEALTH-DWQ potable water quality reporting, and (b) such electronic records shall be admissible as evidence on the same basis as paper documents.

1.1 This Agreement has been executed by the Parties to evidence their mutual intent to create and accept electronic Reports that will satisfy all applicable legal requirements.

2. **DEFINITIONS**

Whenever used in this Agreement or any documents incorporated into this Agreement by reference, the following terms shall be defined as follows:

- 2.1 Compromise. The intentional or unintentional disclosure of a PIN to one or more individuals or organizations that are not authorized to know or use the PIN.
- 2.2 Data. Distinct pieces of information.

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- 2.3 Date of Receipt. The date on which an electronically-filed Document is accessible to HEALTH-DWQ at its Reporting System server in accordance with Paragraph 6.
- 2.4 Document. An electronic message, report, or transaction.
- 2.5 Electronic Agent. A computer program designed, selected, or programmed by a party to initiate or respond to Electronic Messages or Transactions without review by an individual.
- 2.6 Electronic Data Interchange. The transfer of data between different companies using networks, such as the Internet.
- 2.7 Electronic Message. A record generated or communicated by electronic, optical, or other analogous means for the purpose of transmitting information from one electronic information system to another.
- 2.8 Message. Data structured in accordance with the protocol specified in the Guidelines and transmitted electronically between the Parties and relating to a Transaction.
- 2.9 Party. A person or entity involved in this agreement.
- 2.10 Personal Identification Number (PIN). A sequence of alpha-numeric characters assigned to Certifier by HEALTH-DWQ so as to uniquely identify Certifier.
- 2.11 Receive. To take delivery of a Record, Transaction, or Electronic Message in accordance with Paragraph 4 of this Agreement.
- 2.12 Record. Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a form that is readable by individuals.
- 2.13 Report. The Data and any accompanying explanatory text required by HEALTH-DWQ to be submitted by Certifier.
- 2.14 Signed. For the purposes of EDI, a Document is "signed" if it includes a symbol and/or action that is adopted or performed by the sender or the sender's Electronic Agent with the present intent to authenticate or manifest assent to the Document. Actions or symbols adopted or performed by an Electronic Agent serve to authenticate with present intent a record or message on behalf of a Party if the Party designed, programmed or selected the Electronic Agent with an intent that the agent produce the result and the Electronic Agent performs in a manner consistent with its intended programming. That a record or message is signed is conclusively presumed as a matter of law if the Parties have agreed to an authentication procedure and the symbol or action taken complies with that procedure. Otherwise, that a document is signed may be proved in any manner including by a showing that a procedure existed by which a Party must of necessity have taken an action or executed a symbol in order to have proceeded further in the use or processing of the information.
- 2.15 Transaction. Any communication made or transmission performed and identified as the communication or transmission to which an Electronic Message refers, including but not limited to the filing of a Report.
- 2.16 Transmission Log. A listing of all items sent electronically and generally includes the date, time, and name and location of the file transmitted and the identity of the person who initiated the transmission.

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2.17 Writing. Any Document properly transmitted pursuant to this Agreement shall be considered to be a "writing" or "in writing", and shall be accepted as such whenever written documents are required by the applicable laws.

(Note: "For the purpose of interpreting federal statutes, 'writing' is defined to include `printing and typewriting and reproductions of visual symbols by photographing, multi graphing, mimeographing, mani-folding, or otherwise.' Although the terms of contracts formed using EDI are stored in a different manner than those of paper and ink contracts, they ultimately take the form of visual symbols. It is sensible to interpret federal law in a manner to accommodate technological advancements. It is evident that EDI technology had not been conceived nor, probably, was even anticipated at the times section 1501 and the statutory definition of "writing" were enacted. Nevertheless, we conclude that, given the legislative history of section 1501 and the expansive definition of writing, section 1501 and 1 U.S.C. Section 1 encompass EDI technology." U.S. Comptroller General Decision, "Use of Electronic Data Interchange Technology to Create Valid Obligations," File: B-245714 (13 December 1991).

3. VALIDITY AND ENFORCEABILITY

- 3.1 This Agreement has been executed by the Parties to evidence their mutual intent to create and accept electronic Reports that will satisfy all applicable legal requirements for drinking water quality data exchange.
- 3.2 Any documents properly communicated pursuant to this Agreement shall be considered to be a "writing" or "in writing"; and any such records which contain or to which there is affixed a Signature, as defined by Paragraph 6 of this Agreement, shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from the Reporting System established and maintained in the normal course of business.
- 3.3 The conduct of the Parties pursuant to this Agreement, including the use of Signed Records communicated pursuant to this Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the Parties in furtherance of this Agreement.
- 3.4 The Certifier agrees not to contest the admissibility, validity or enforceability of Signed Records under the provisions of any applicable law relating to certain agreements needing to be in writing or signed by the Party to be bound thereby. Signed Records, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of copies of the Signed Records under the Rhode Island Rules of Evidence and/or the Federal Rules of Evidence as inadmissible or in violation of either the business records exception of the rule on hearsay, or the best evidence rule, or on the basis that the Signed Records were not originated or maintained in documentary (paper) form.

4. FILING, RECEIPT, VERIFICATION

- 4.1 To file a Document, Certifier shall initiate a transmission as specified by the "RIDOH E2RS XML Transmission Protocol." An electronically-filed Document is received by HEALTH-DWQ when it has been fully processed as described in Paragraph 4.2.
- 4.2 Upon receipt of a Document, the Reporting System server shall process the Document to make it accessible to HEALTH-DWQ. The Document is fully processed when it is retrievable from the electronic mailbox by HEALTH-DWQ, syntactically conforms to applicable XML protocol as modified by HEALTH-DWQ, and is able to be successfully translated by the Reporting System server.

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4.3 The Certifier shall review the status of each submission as shown on the Reporting System website. If the submission has been rejected or if the Reporting System website does not indicate that the Document has been received within 48 hours, the Certifier shall resend the Document and follow any recovery procedures stated in the applicable Laboratory Participation Package or Water System Participation Package until the submission is accepted.

5. INABILITY TO TRANSMIT

Circumstances, both foreseeable and unforeseeable, may prevent Certifier from filing Reports electronically. Certifier acknowledges that the inability to file electronically shall not excuse Certifier from the requirement to file any Report with HEALTH-DWQ by the appropriate regulatory deadline. If Certifier is unable to electronically file a Report by the applicable deadline, Certifier shall notify HEALTH-DWQ of the situation and proceed as outlined in the Laboratory Participation Package or the Water System Participation Package, as applicable.

6. SIGNATURE

Certifier shall affix its PIN to each Document transmitted by Certifier. The PIN so affixed shall be deemed to be Certifier's Signature. Certifier agrees that any such Signature affixed to or contained in any transmitted Document shall be sufficient to verify that Certifier originated the transmission and possessed the requisite authority to (a) originate the transaction and (b) certify the accuracy of the content of the document at the time of transmittal. Certifier expressly agrees that it will sign each and every Report it submits by using its PIN, and that the use of the PIN constitutes certification of the truth and accuracy, upon penalty of perjury, of the information contained in each such Report. Certifier also expressly agrees that each Report it submits by using its PIN constitutes agreement with the certification statement.

7. EDI TRANSACTION PARAMETERS

- 7.1 Either Party may electronically transmit to or receive from the other Party using the XML format explained in the document "RIDOH E2RS XML Transmission Protocol" any Transaction sets which by agreement are added to this Agreement. All Documents shall be transmitted in accordance with the standards set forth herein and in the "RIDOH E2RS XML Transmission Protocol". HEALTH-DWQ and the "HEALTH-DWQ E2RS XML Transmission Protocol" are hereby incorporated herein by reference.
- 7.2 All Documents/Reports transmitted between the Parties shall adhere to the Protocol established in the Laboratory Participation Package or the Water System Participation Package, the "RIDOH E2RS XML Transmission Protocol", and all modifications of these documents.
- 7.3 Whenever HEALTH-DWQ intends to upgrade to a new version and release of the XML standard or modify the Guidelines, HEALTH-DWQ shall give notice of its intent and shall establish a conversion date. Certifier shall have a minimum of sixty (60) days from the conversion date to upgrade to the new standard. HEALTH-DWQ can discontinue support of the previous standard no sooner than ninety (90) days after the conversion date.

8. SYSTEM AND OPERATION EXPENSES

Each Party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

9. SECURITY

The Parties shall take reasonable actions to implement and maintain security procedures necessary to ensure the protection of transmissions against the risk of unauthorized access, alteration, loss, or destruction including, but not limited to: protecting the secrecy of passwords and PINs and transmitting only XML protocol text files.

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- 9.1 HEALTH-DWQ will assign a PIN to the Certifier upon receipt of this fully executed document.
- 9.2 Each authorized user shall protect the security of an assigned PIN from compromise and shall take all necessary steps to prevent the loss, disclosure, modification, or unauthorized use of the PIN. Certifier shall notify HEALTH-DWQ immediately if it has reason to believe the security of any PIN has been compromised. Notification shall be made by telephone, e-mail, or telefacsimile and shall be followed by written notice on Certifier's letterhead and signed by an authorized officer within two (2) business days. If HEALTH-DWQ has reason to believe that PIN security has been compromised, HEALTH-DWQ shall consult with the Certifier and initiate PIN changes as necessary. Certifier also shall notify HEALTH-DWQ in writing on company letterhead and signed by an authorized officer of the termination of employment or reassignment of any authorized representative. Certifier remains liable for any use of its PIN which occurs prior to notice being received by HEALTH-DWQ.

10. MISDIRECTED AND CORRUPTED TRANSMISSIONS

If HEALTH-DWQ has reason to believe that a Message that has been received by HEALTH-DWQ from Certifier is not intended for HEALTH-DWQ or is corrupted, HEALTH-DWQ shall notify Certifier. If Certifier agrees that the Message was not intended for HEALTH-DWQ or was corrupted, HEALTH-DWQ shall delete from HEALTH-DWQ's system the information contained in such Message (where allowed by applicable law) but not the record of its receipt. Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified as incorrect, HEALTH-DWQ shall notify the Certifier and Certifier shall retransmit the Message as soon as practicable with a clear indication that it is a corrected Message.

11. COMMUNICATIONS CONNECTIONS

Unless otherwise stipulated in a separate agreement, Documents shall be transmitted electronically to each Party through a third party Internet service provider ("ISP") via the Internet. Certifier assumes all risks associated with interactions with ISPs.

- 11.1 Each Party shall be responsible for ensuring the accuracy of its transmissions except as otherwise provided in this Agreement.
- 11.2 The Parties agree that either of them may have access to the other Party's ISP records relating to this Agreement at the expense of the requesting Party.

12. RECORD RETENTION AND STORAGE

- 12.1 Certifier shall insure that an official Transmission Log of all transactions is maintained without any modifications, as described in the Laboratory Participation Package or the Water System Participation Package. The Reporting System server shall maintain a complete and unalterable record of all submissions made, submission date, and Certifier name and PIN. Certifier shall maintain the Transmission Log without any modification for as long as required for a paper record. Specific guidelines for this log are included in the Laboratory Participation Package or the Water System Participation Package, and "RIDOH E2RS XML Transmission Protocol".
- 12.2 Nothing herein is intended to release Certifier from or waive any requirement of law applicable to Certifier pertaining to record or document retention, or to create new or additional requirements for retention of records or documents except as specifically noted herein or in any other supporting documentation. The Party submitting electronic information shall retain all records, regardless of the medium on which they are recorded, used in the derivation of all Documents or information therein transmitted pursuant to this Agreement for the period that would be required for functionally equivalent paper records.

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13. REVISIONS

This Agreement, the Laboratory Participation Package or the Water System Participation Package, as applicable, and the "RIDOH E2RS XML Transmission Protocol" constitute the entire agreement between the Parties. As the Parties develop additional capabilities respecting EDI, addenda may be added to this Agreement. Upon the effective date, each Addendum shall be appended to this Agreement. If Certifier does not agree to specified changes in the terms and conditions of this Agreement as provided in the newly published Addenda, Certifier shall notify HEALTH-DWQ in accordance with paragraph 14, below, and shall resume paper transmittals of all required filings.

14. TERMINATION

This Agreement shall remain in effect until terminated. Either Party may terminate the Agreement by providing not less than thirty (30) days' prior written notice in accordance with the "RIDOH E2RS XML Transmission Protocol", and the Laboratory Participation Package or the Water System Participation Package, as applicable, which notice shall specify the effective date of termination. Notice of termination shall not affect the respective obligations or rights of the Parties arising under any other agreement or otherwise under this Agreement prior to the effective date of termination. Termination of this Agreement shall not affect any action required to complete or implement Messages that are sent prior to such termination. Emergency temporary termination of computer connections may be made to protect data from illegal access or other incidental damage.

15. SURVIVABILITY

This Agreement shall remain in full effect, and shall be binding upon, HEALTH-DWQ and the Certifier in the event that the Laboratory Director ceases employment, or otherwise disengages from the position as the lead Certifier for the Laboratory, provided that the new Laboratory Director or lead Certifier notifies HEALTH-DWQ upon determination that a change of personnel has occurred at the Laboratory. The new lead Certifier for the Laboratory shall complete a new HEALTH-DWQ Laboratory Registration Form and submit same to HEALTH-DWQ within 10 days of said personnel change.

16. ASSIGNABILITY

This Agreement is for the benefit of, and shall be binding upon, HEALTH-DWQ and the Certifier and their respective successors and assigns.

17. SEVERABILITY

Any provision of this Agreement that is determined to be invalid or unenforceable shall be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

18. NOTICE

- All notices or other forms of notification, requests, or instructions required to be given by a Party to any other Party under this Agreement shall be delivered: (a) by hand; (b) by first class mail, postage prepaid; or (c) such other recognized carrier as the Parties may agree to.
- 18.2 All such notices shall be delivered or sent to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this paragraph.
- 18.3 Except for notices under paragraph 9, notices may be sent by electronic means that produce a hard copy read-out, including telex and facsimile.
- 18.4 Notices sent in accordance with this paragraph shall be deemed to have been received:

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- (a) if sent by electronic means during normal business hours of the addressee, at the time of transmission;
- (b) if sent by electronic means other than during normal business hours of the addressee, one hour after the commencement of the next working day following the day of transmission;
- (c) if sent by first-class post or other recognized carrier, 3 business days after posting exclusive of the day of posting unless a date stamp applied by the addressee in the normal course of business shows an earlier receipt; or
- (d) if delivered by hand, on the day of delivery.
- 18.5 The Notice Address for HEALTH-DWQ to be used by any and all Parties to this Agreement shall be as follows:

RI Department of Health Office of Drinking Water Quality Three Capitol Hill, Room 209 Providence, RI 02908

19. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the law of the State of Rhode Island and the Federal laws of the United States.

20. CHOICE OF LANGUAGE

The Parties have agreed that this Agreement and all Documents and other communications transmitted via the Reporting System or otherwise delivered with respect to this Agreement shall be expressed in the English language.

21. DISPUTE RESOLUTION

All disputes, differences, disagreements, and/or claims between the Parties arising under or relating to this Agreement that are not resolved by negotiation and that the Parties cannot agree to submit for arbitration or other procedure for the resolution of disputes, shall be subject to the jurisdiction of the courts of the State of Rhode Island.

22. ENTIRE AGREEMENT

This Agreement, the Laboratory Participation Package and the "RIDOH E2RS XML Transmission Protocol" constitute the complete agreement of the Parties relating to the matters specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party.

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